

MEMORANDUM

TO: Agency Directors

FROM: Marcia Adams, Executive Director

SUBJECT: Families First Coronavirus Response Act

DATE: March 27, 2020

On March 18, 2020, the “Families First Coronavirus Response Act” (FFCRA) was signed into law. The FFCRA seeks to assist employees impacted by novel coronavirus (“COVID-19”). The FFCRA, effective April 1, 2020, includes two forms of paid leave for employees: Emergency Family and Medical Leave (EFMLA) and Emergency Paid Sick Leave.

The provisions of the FFCRA are only for those employees who cannot work, including work-from-home, as a result of COVID-19. As directed by Governor Henry McMaster in Executive Order 2020-11, state agencies should still first offer work-from-home opportunities to employees to the maximum extent possible and only use the provisions of the Act when an employee is unable to work-from-home due to unique circumstances.

Below is a brief explanation of the two forms of paid leave:

Emergency FMLA: The Emergency Family and Medical Leave Expansion Act (EFMLA) amends and expands the federal Family and Medical Leave Act (FMLA), on a temporary basis, to provide qualifying employees 12 weeks of leave if the employee is unable to work, including work-from-home, due to the need to care for the employee’s child (under 18 years of age) if the child’s school or place of care is closed or the child care provider is unavailable due to a public health emergency. A public health emergency is “an emergency with respect to COVID-19 declared by a Federal, State, or local authority.”

When determining the definition of school or place of care, agencies are encouraged to interpret this as broadly as possible and to include any elementary and secondary schools, and any provider who receives compensation for providing childcare services.



EFMLA leave is available to all employees who have been employed at least 30 calendar days, including employees who do not accrue leave. The first 10 workdays of the 12 workweeks of leave provided under the EFMLA are unpaid, but in accordance with standard FMLA administration, employees are required to use any paid leave available concurrently with EFMLA leave during this 10-day period. After the first 10 workdays, paid leave must be provided for the remaining leave taken under the EFMLA. Paid leave provided to eligible employees shall be calculated at two-thirds of an employee's regular rate of pay and should be based on the number of hours the employee would otherwise be normally scheduled to work. Paid leave under the EFMLA is capped at \$200 per day and \$10,000 in the aggregate. Employees can use accrued leave to augment leave taken pursuant to the EFMLA up to their regular salary rate.

Emergency Paid Sick Leave Act: The Emergency Paid Sick Leave Act is a new, temporary form of leave that applies to any public agency, including all South Carolina state government agencies and institutions. State employees may take up to 80 hours of paid sick leave for one of six qualifying reasons outlined below. Employee is defined by the Act as any individual who meets the definition of employee under the Fair Standards Labor Act (FLSA). Therefore, this includes employees who do not currently earn leave including temporary, temporary grant and time-limited employees. Employees are eligible from their first day of employment.

If an employee is unable to work (or work-from-home), the employee can receive paid sick time if:

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID–19. Governor McMaster's Executive Order requiring that all non-essential state employees not report to work constitutes a "Federal, State, or local quarantine or isolation order related to COVID–19."
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID–19.
3. The employee is experiencing symptoms of COVID–19 and seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to an order as described in the first reason for leave above OR has been advised to quarantine as described in the second reason for leave above.
5. The employee is caring for a child where the school or place of care has been closed, or the childcare provider is unavailable, due to COVID–19 precautions.
6. The employee is experiencing any other substantially similar condition specified by the Act.

The payment provided to employees who utilize leave under the Act will depend on the reason the leave is taken. If leave is taken for the first three reasons listed above, the employee is paid their regular rate of pay up to \$511.00 per day or \$5,110 in the aggregate. If leave is taken for reasons four through six listed above, the employee is paid at 2/3 of the employee's regular rate of pay up to a maximum of \$200 per day and \$2,000 in the aggregate. Employees can use accrued leave to augment leave taken pursuant to the Emergency Paid Sick Leave Act up to their regular salary rate.

Detailed guidance on the Act is being sent to human resources directors today and further guidance on implementation of the Act will be sent to them next week. Additionally, the Division of State Human Resources will hold a conference call next week with human resources directors to answer questions about

the FFCRA. If you have any questions, please do not hesitate to contact Director of the Division of State Human Resources Karen Wingo (803-422-8645), or me.